

October 19, 2015



Comments on Potential 2016 Amendments to the Cap-and-Trade Regulation

Thank you for the opportunity to provide these comments regarding potential amendments to the Cap-and-Trade Regulation.

Headquartered in San Francisco, Origin Climate (formerly TerraPass) is a Certified B Corporation whose mission is to fight climate change by bringing emission reduction projects to fruition. Since 2004, we have helped dozens of family-owned dairy farms fund anaerobic digester projects through the sale of carbon offsets. We serve as Authorized Project Designee for many such projects.

We are deeply appreciative of the positive impact that the Cap-and-Trade Regulation has had on dairies seeking to improve their environmental performance by installing anaerobic digester technology. California is the #1 milk producing state in the United States, and ARB's support for digester technology is not only improving the air, soil, and water quality at and around dairy farms, but it is also creating new California jobs in both urban and rural areas. We would like to offer the following comments as means of increasing this positive environmental and economic impact:

- **Section 95973(b). A clearer method of testing for the regulatory conformance of offset projects is needed.** Many comments on this paragraph have been submitted in the past. With several years of practical experience now behind us, there appears to be general consensus among all parties (ARB staff included) that attempting to apply this language to real-life project situations is time-consuming and in many cases ineffective in achieving its intended purpose.

We understand the fundamental need to prevent funds from the sale of offsets (which ultimately derive from California ratepayers) from flowing to offset projects that are harming or degrading the environment. We also understand the need to create cost containment mechanisms that reduce the cost burden of the Cap-and-Trade Regulation on California ratepayers while achieving the needed emission reductions.

The language as currently written fails to achieve these objectives effectively or efficiently since it subjects the terms "enforcement action" and "directly applicable" to the interpretation of staff with little or no experience in the operation or regulation of sites and facilities hosting offset projects. This subjectivity has at times resulted in extensive fact-finding missions that can stretch out over months (or longer) and absorb large quantities of staff time on all sides, almost exclusively on issues that have no fundamental impact on or relationship to the environmental integrity of the offset credits or projects.

With this in mind, we would offer the following ideas as a means of improving the efficiency and efficacy of the offset program:

- i. Add language to clarify the definition of "enforcement action" as a fine, penalty, or similar punitive action. Such a definition would serve to identify any real threats or adverse impacts to the environment and avoid staff time being lost on extensive research and adjudication of routine administrative notices, which comprise the bulk of the communications (at least in the agricultural sector) between an offset project operator and its regulator.
- ii. Add language to clarify the definition of "directly applicable" as laws or regulations that apply to the incremental activities and facilities resulting directly from the implementation of the offset project. This would help avoid the loss of staff time on researching activities that have no bearing on the environmental integrity of the projects and are not being funded by proceeds from the sale of offset credits.
- iii. Simplify the remaining language in the paragraph that would be considered superfluous if the first two definitions above are well constructed, as this will provide for less confusion in real-life application.

With these principles in mind, we would reconstruct this section of the regulation along the following lines:

"Local, Regional, and National Regulatory and Environmental Impact Assessment Requirements. An Offset Project Operator or Authorized Project Designee must fulfill all local, regional, and national requirements on environmental impact assessments that apply based on the offset project location. In addition, an offset project must not be out of compliance with directly applicable local, regional, and national environmental and health and safety laws and regulations. The project is out of regulatory compliance if an enforcement action such as a fine, penalty, or punitive action was taken by a regulatory oversight body during the Reporting Period and such action specified a facility or activity that was implemented because of the offset project. An offset project is not eligible to receive ARB or registry offset credits for GHG reductions or GHG removal enhancements for the entire Reporting Period if the offset project is not in compliance with regulatory requirements directly applicable to the offset project during the Reporting Period."

- **Section 95977.1(a) Rotation of Verification Bodies.** The language in this section regarding rotation appears to apply specifically to the scenario in the first sentence, when an offset project has six consecutive Reporting Periods verified by the same verification body. But it has been applied in such a way as to disallow alternation of verification bodies. We recommend altering the language of Section 95977.1(a) to specify that an offset project "shall not have

more than six Reporting Periods verified by the same verification body or offset verification team member(s) within a 9 year span, unless otherwise specified..."